By: Representative Martinson

To: Municipalities

# HOUSE BILL NO. 988

1 AN ACT TO AUTHORIZE MUNICIPALITIES TO ADOPT CAPITAL
2 IMPROVEMENT PLANS; TO AUTHORIZE MUNICIPALITIES TO IMPOSE
3 DEVELOPMENT IMPACT FEES ON DEVELOPMENT THAT REQUIRES THE
4 EXPANSION OF PUBLIC FACILITIES; TO PROVIDE FOR AN ADVISORY
5 COMMITTEE TO RECOMMEND LAND USE ASSUMPTIONS, CAPITAL IMPROVEMENTS
6 PLANS AND IMPACT FEES, AND PROCEDURES FOR DOING SAME; TO REQUIRE
7 SUCH MUNICIPALITIES TO ADOPT AN ORDINANCE IN ORDER TO IMPOSE A
8 DEVELOPMENT IMPACT FEE; TO PROVIDE FOR COMPUTATION OF THE
9 PROPORTIONATE SHARE OF COSTS FOR NEW PUBLIC FACILITIES NEEDED TO
10 SERVE NEW GROWTH AND DEVELOPMENT THAT RESULTS IN THE EXPANSION OR
11 CREATION OF PUBLIC FACILITIES; TO LIMIT THE USES OF THE REVENUE
12 COLLECTED FROM A DEVELOPMENT IMPACT FEE TO THE INCREASED COSTS OF
13 SERVING THE NEW GROWTH AND DEVELOPMENT; AND FOR RELATED PURPOSES.

14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

15 SECTION 1. This chapter shall be known and may be cited as
16 the "Mississippi Development Impact Fee Act."

17 SECTION 2. The Legislature finds that an equitable program
18 for planning and financing public facilities needed to serve new
19 growth and development is necessary in order to promote and
20 accommodate orderly growth and development and to protect the
21 public health, safety and general welfare of the citizens of the
22 State of Mississippi. It is the intent by enactment of this
23 chapter to:

24 (a) Ensure that adequate public facilities are
25 available to serve new growth and development;

26 (b) Promote orderly growth and development by
27 establishing uniform standards by which local governments may
28 require that those who benefit from new growth and development pay
29 a proportionate share of the cost of new public facilities needed
30 to serve new growth and development;

31 (c) Establish minimum standards for the adoption of
32 development impact fee ordinances by governmental entities;
33 (d) Ensure that those who benefit from new growth and
34 development are required to pay no more than their proportionate
35 share of the cost of public facilities needed to serve new growth
36 and development and to prevent duplicate and ad hoc development
37 requirements; and
38 (e) Empower governmental entities which are authorized
39 to adopt ordinances to impose development impact fees.
40 SECTION 3. As used in this chapter:
41 (a) "Affordable housing" means housing affordable to
42 families whose incomes do not exceed eighty percent (80%) of the
43 median income for the service area or areas within the
44 jurisdiction of the governmental entity.
45 (b) "Appropriate" means to legally obligate by contract
46 or otherwise commit to use by appropriation or other official act
47 of a governmental entity.
48 (c) "Capital improvements" means improvements with a
49 useful life of ten (10) years or more, by new construction or
50 other action, which increase the service capacity of a public
51 facility.
52 (d) "Capital improvement element" means a component of
53 a comprehensive plan adopted under Chapter 1, Title 17,
54 Mississippi Code of 1972, which component meets the requirements
55 of a capital improvements plan under this chapter.
56 (e) "Capital improvements plan" means a plan adopted
57 under this chapter that identifies capital improvements for which
58 development impact fees may be used as a funding source.
59 (f) "Developer" means any person or legal entity
60 undertaking development.
61 (g) "Development" means any construction or
62 installation of a building or structure, or any change in use of a
63 building or structure, or any change in the use, character or

64 appearance of land, which creates additional demand and need for
65 public facilities.

66 (h) "Development approval" means any written
67 authorization from a governmental entity which authorizes the
68 commencement of a development.

69 (i) "Development impact fee" or "impact fee" means a
70 charge or assessment, for the payment of money, imposed by a
71 municipality or town, as a condition of development approval to
72 fund or pay for the proportionate share of the costs of capital
73 improvements for new or expanded public facilities necessitated by
74 and attributable to the new development. This term does not
75 include:

76 (i) A charge or fee to pay the administrative,
77 plan review, or inspection costs associated with permits required
78 for development;

79 (ii) Connection or hookup charges;

80 (iii) Availability charges for drainage, sewer,
81 water, or transportation charges for services provided directly to
82 the development; or

83 (iv) Amounts collected from a developer in a
84 transaction in which the governmental entity has incurred expenses
85 in constructing capital improvements for the development if the
86 owner or developer has agreed to be financially responsible for
87 the construction or installation of the capital improvements,
88 unless a written agreement is made under Section 10 of this act
89 for credit or reimbursement.

90 (j) "Development requirement" means a requirement
91 attached to a developmental approval or other governmental action
92 approving or authorizing a particular development project
93 including, but not limited to, a rezoning, which requirement
94 compels the payment, dedication or contribution of goods,
95 services, land, or money as a condition of approval.

96 (k) "Fee payer" means that individual or legal entity
97 that pays or is required to pay a development impact fee.
98 (l) "Governmental entity" means a town or city of local
99 government that is empowered in this enabling legislation to adopt
100 a development impact fee ordinance.
101 (m) "Land use assumption" means a description of the
102 service area and projections of land uses, densities, intensities,
103 and population in the service area over at least a twenty-year
104 period.
105 (n) "Level of service" means a measure of the
106 relationship between service capacity and service demand for
107 public facilities.
108 (o) "Manufactured home" means a structure, constructed
109 according to HUD/FHA mobile home construction and safety
110 standards, transportable in one or more sections, which, in the
111 traveling mode, is eight (8) feet or more in width or is forty
112 (40) body feet or more in length, or when erected on site, is
113 three hundred twenty (320) or more square feet, and which is built
114 on a permanent chassis and designed to be used as a dwelling with
115 or without a permanent foundation when connected to the required
116 utilities, and includes the plumbing, heating, air conditioning,
117 and electrical systems contained therein, except that such term
118 shall include any structure which meets all the requirements of
119 this subsection except the size requirements and with respect to
120 which the manufacturer voluntarily files a certification required
121 by the Secretary of Housing and Urban Development and complies
122 with the standards established under 42 USCS 5401, et seq.
123 (p) "Modular building" means any building or building
124 component, other than a manufactured home, which is constructed
125 according to standards contained in the Southern Standard Building
126 Code, as adopted or any amendments thereto, which is of closed
127 construction and is either entirely or substantially prefabricated
128 or assembled at a place other than the building site.

129 (q) "Present value" means the total current monetary
130 value of past, present, or future payments, contributions or
131 dedications of goods, services, materials, construction or money.
132 (r) "Project" means a particular development on an
133 identified parcel of land.
134 (s) "Project improvements" mean site improvements and
135 facilities that are planned and designed to provide service for a
136 particular development project and that are necessary for the use
137 and convenience of the occupants or users of the project.
138 (t) "Proportionate share" means that portion of the
139 cost of system improvements determined under Section 8 of this act
140 which are proportionate to the service demands and needs of the
141 project.
142 (u) "Public facilities" means:
143 (i) Water supply production, treatment, storage
144 and distribution facilities;
145 (ii) Wastewater collection, treatment and disposal
146 facilities;
147 (iii) Roads, streets and bridges, including
148 rights-of-way, and traffic signals.
149 (iv) Storm water collection, retention, detention,
150 treatment and disposal facilities.
151 (v) "Service area" means any defined geographic area
152 identified by a governmental entity or by intergovernmental
153 agreement in which specific public facilities provide service to
154 development within the area defined, on the basis of sound
155 planning and/or engineering principals, or both.
156 (w) "Service unit" means a standardized measure of
157 consumption, use, generation or discharge attributable to an
158 individual unit of development calculated in accordance with
159 generally accepted engineering and/or planning standards for a
160 particular category of capital improvements.

161 "Service unit" does not include alterations made to existing
162 single family homes.
163 (x) "System improvements," in contrast to project
164 improvements, means capital improvements to public facilities
165 which are designed to provide service to a service area.
166 (y) "System improvement costs" means costs incurred for
167 construction or reconstruction of system improvements, including
168 design, acquisition, engineering and other costs directly
169 attributable thereto. System improvement costs do not include:
170 (i) Construction, acquisition or expansion of
171 public facilities other than capital improvements identified in
172 the capital improvements plan;
173 (ii) Repair, operation or maintenance of existing
174 or new capital improvements;
175 (iii) Upgrading, updating, expanding or replacing
176 existing capital improvements to serve existing development in
177 order to meet stricter safety, efficiency, environmental or
178 regulatory standards;
179 (iv) Upgrading, updating, expanding or replacing
180 existing capital improvements to provide better service to
181 existing development;
182 (v) Administrative and operating costs of the
183 governmental entity;
184 (vi) Principal payments and interest or other
185 finance charges on bonds or other indebtedness except financial
186 obligations issued by or on behalf of the governmental entity to
187 finance capital improvements identified in the capital
188 improvements plan.
189 SECTION 4. Governmental entities which comply with the
190 requirements of this chapter may impose, by ordinance, development
191 impact fees specifically recognized in this act as a condition of
192 development approval on all developments.

193 (a) A development impact fee shall not exceed a
194 proportionate share of the cost of system improvements determined
195 in accordance with Section 8 of this act. Development impact fees
196 shall be based on actual system improvement costs or reasonable
197 estimates of such costs supported by sound engineering studies.
198 (b) A development impact fee shall be calculated on the
199 basis of levels of service for public facilities adopted in the
200 development impact fee ordinance of the governmental entity that
201 are applicable to existing development as well as new growth and
202 development. The construction, improvement, expansion or
203 enlargement of new or existing public facilities for which a
204 development impact fee is imposed must be directly attributable to
205 the capacity demands generated by the new development.
206 (c) A development impact fee ordinance shall specify
207 the point in the development process at which the development
208 impact fee shall be collected. The development impact fee may be
209 collected no earlier than the final of a final plat, or the
210 issuance of a building permit or a manufactured home installation
211 permit, or as may be agreed by the developer and the governmental
212 entity.
213 (d) A development impact fee ordinance shall be adopted
214 in accordance with the procedural requirements of Section 7 of
215 this act.
216 (e) A development impact fee ordinance shall include a
217 provision permitting individual assessments of development impact
218 fees under guidelines established in the ordinance.
219 (f) A development impact fee ordinance shall provide a
220 process whereby a governmental entity shall provide a written
221 certification of the amount of development impact fee(s) that are
222 due for a particular project, which shall establish the
223 development impact fee for a period of five (5) years from the
224 date of the certification. The certification shall include an
225 explanation of the calculation of the impact fee including an

226 explanation of factors considered under Section 8 of this act.
227 The certification shall also specify the system improvement(s) for
228 which the impact fee is intended to be used.

229 (g) A development impact fee ordinance shall include a
230 provision for credits in accordance with the requirements of
231 Section 10 of this act.

232 (h) A development impact fee ordinance shall include a
233 provision prohibiting the expenditure of development impact fees
234 except in accordance with the requirements of Section 11 of this
235 act.

236 (i) A development impact fee ordinance may provide for
237 the imposition of a development impact fee for system improvement
238 costs incurred subsequent to adoption of the ordinance to the
239 extent that new growth and development will be served by the
240 system improvements.

241 (j) A development impact fee ordinance may exempt all
242 or part of a particular development project from development
243 impact fees provided that such project is determined to create
244 affordable housing, provided that the public policy which supports
245 the exemption is contained in the governmental entity's
246 comprehensive plan and provided that the exempt development's
247 proportionate share of system improvements is funded through a
248 revenue source other than development impact fees.

249 (k) A development impact fee ordinance shall provide
250 that development impact fees shall only be spent for the category
251 of system improvements for which the fees were collected and
252 within the service area in which the project is located.

253 (l) A development impact fee ordinance shall provide
254 for a refund of development impact fees in accordance with the
255 requirements of Section 12 of this act.

256 (m) A development impact fee ordinance shall establish
257 a procedure for timely processing of applications for
258 determination by the governmental entity regarding development

259 impact fees applicable to a project, individual assessment of
260 development impact fees, and credits or reimbursements to be
261 allowed or paid under Section 10 of this act.

262 (n) A development impact fee ordinance shall provide
263 for appeals regarding development impact fees in accordance with
264 the requirements of Section 13 of this act.

265 (o) A development impact fee ordinance must provide a
266 detailed description of the methodology by which costs per service
267 unit are determined. The methodology must include the following
268 provisions: The development impact fee per service unit may not
269 exceed the amount determined by dividing the costs of the capital
270 improvements described in Section 9 of this act, by the total
271 number of projected service units described in Section 9 of this
272 act. If the number of new service units projected over a
273 reasonable period of time is less than the total number of new
274 service units shown by the approved land use assumptions at full
275 development of the service area, the maximum impact fee per
276 service unit shall be calculated by dividing the costs of the part
277 of the capital improvements necessitated by and attributable to
278 the projected new service units described in Section 9 of this
279 act, by the total projected new service units described in that
280 section.

281 (p) A development impact fee shall include a
282 description of acceptable levels of service for system
283 improvements.

284 (q) A development impact fee ordinance shall include a
285 schedule of development impact fees for various land uses per unit
286 of development. The ordinance shall provide that a developer
287 shall have the right to elect to pay a project's proportionate
288 share of system improvement costs by payment of development impact
289 fees according to the fee schedule as full and complete payment of
290 the development project's proportionate share of system
291 improvement costs, except as provided in Section 15 of this act.

292 (r) After payment of the development impact fees or
293 execution of an agreement for payment of development impact fees,
294 additional development impact fees or increases in fees may not be
295 assessed unless the number of service units increases or the scope
296 or schedule of the development changes. In the event of an
297 increase in the number of service units or schedule of the
298 development changes, the additional development impact fees to be
299 imposed are limited to the amount attributable to the additional
300 service units or change in scope of the development.
301 (s) No system for the calculation of development impact
302 fees shall be adopted which subjects any development to double
303 payment of impact fees.
304 (t) A development impact fee ordinance shall exempt
305 from development impact fees the following activities:
306 (i) Rebuilding the same amount of floor space of a
307 structure which was destroyed by fire or other catastrophe,
308 providing the structure is rebuilt and ready for occupancy within
309 three (3) years of its destruction;
310 (ii) Remodeling or repairing a structure which
311 does not increase the number of service units;
312 (iii) Replacing a residential unit, including a
313 manufactured home, with another residential unit on the same lot,
314 provided that the number of service units does not increase;
315 (iv) Placing a temporary construction trailer or
316 office on a lot;
317 (v) Constructing an addition on a residential
318 structure which does not increase the number of service units; and
319 (vi) Adding uses that are typically accessory to
320 residential uses, such as tennis courts or clubhouse, unless it
321 can be clearly demonstrated that the use creates a significant
322 impact on the capacity of system improvements.
323 (u) A development impact fee will be assessed for
324 installation of a modular building or manufactured home unless the

325 fee payer can demonstrate by documentation such as utility bills
326 and tax records, either:
327 (i) That a modular building or manufactured home
328 was legally in place on the lot or space prior to the effective
329 date of the development impact fee ordinance; or
330 (ii) That a development impact fee has been paid
331 previously for the installation of a modular building,
332 manufactured home or recreational vehicle on that same lot or
333 space.
334 (v) A development impact fee ordinance shall provide
335 for the calculation of a development impact fee in accordance with
336 generally accepted accounting principles. A development impact
337 fee shall not be deemed invalid because payment of the fee may
338 result in an incidental benefit to owners or developers within the
339 service area other than the person paying the fee.
340 (w) A development impact fee ordinance shall include a
341 description of acceptable levels of service for system
342 improvements.
343 SECTION 5. Governmental entities as defined in Section 3(l),
344 which are jointly affected by development are authorized to enter
345 into intergovernmental agreements with each other for the purpose
346 of developing joint plans for capital improvements or for the
347 purpose of agreeing to collect and expend development impact fees
348 for system improvements, or both, provided that such agreement
349 complies with all applicable state laws. Governmental entities
350 are also authorized to enter into agreements with the Mississippi
351 Department of Transportation for the expenditure of development
352 impact fees pursuant to a developer's agreement under Section 15
353 of this act.
354 SECTION 6. (1) A governmental entity that is considering or
355 that has adopted a development impact fee ordinance shall
356 establish a development impact fee advisory committee, composed of
357 not fewer than five (5), but no more than seven (7), members

358 appointed by the governing authority of the governmental entity.
359 Members of the advisory committee may not include elected
360 officials or employees of the governmental entity. At least forty
361 percent (40%) of the members must be active in the business of
362 development, building, or other real estate related professional
363 work.
364 (2) An existing planning or planning and zoning commission
365 may serve as the development impact fee advisory committee if the
366 membership criteria in subsection (1) are met.
367 (3) The development impact fee advisory committee shall
368 serve in an advisory capacity and is established to:
369 (a) Assist the governmental entity in adopting land use
370 assumptions;
371 (b) Review the capital improvements plan and proposed
372 amendments, and file written comments;
373 (c) Monitor and evaluate implementation of the capital
374 improvements plan;
375 (d) File periodic reports, at least annually, with
376 respect to the capital improvements plan and report to the
377 governmental entity any perceived inequities or improprieties in
378 implementing the plan or imposing the development impact fees;
379 (e) Advise the governmental entity of the need to
380 update or revise land use assumptions, capital improvements plan,
381 and development impact fees; and
382 (f) Monitor and evaluate implementation of the
383 development impact fee ordinance and expenditure of impact fees
384 pursuant thereto.
385 (4) The governmental entity shall make available to the
386 advisory committee, upon request, all financial and accounting
387 information, professional reports in relation to other development
388 and implementation of land use assumptions, the capital
389 improvements plan, and periodic updates of the capital
390 improvements plan.

391 (5) The governmental entity shall provide administrative
392 support to the advisory committee, to the extent necessary to
393 allow the advisory committee to prudently and timely allow the
394 committee to perform all of the functions described in this
395 section.

396 SECTION 7. (1) A development impact fee shall be imposed by
397 a governmental entity in compliance with the provisions set forth
398 in this section.

399 (2) A capital improvements plan shall be developed in
400 coordination with the development impact fee advisory committee
401 utilizing the land use assumptions most recently adopted by the
402 appropriate land use planning agency or agencies.

403 (3) At least one (1) public hearing shall be held to
404 consider adoption, amendment, or repeal of a capital improvements
405 plan. Two (2) notices, at least one (1) week apart, of the time,
406 place and purpose of the hearing shall be published not less than
407 fifteen (15) nor more than thirty (30) days before the scheduled
408 date of the hearing, in a newspaper of general circulation within
409 the jurisdiction of the governmental entity. A second notice of
410 the hearing on adoption of the capital improvements plan,
411 containing the same information, shall be published in the same
412 manner at least seven (7) days before the scheduled date of the
413 hearing. Such notices shall also include a statement that the
414 governmental entity shall make available to the public, upon
415 request, the following: proposed land use assumptions, a copy of
416 the proposed capital improvements plan or amendments thereto, and
417 a statement that any member of the public affected by the capital
418 improvements plan or amendments shall have the right to appear at
419 the public hearing and present evidence regarding the proposed
420 capital improvements plan or amendments. The governmental entity
421 shall send notice of the intent to hold a public hearing by mail
422 to any person who has requested in writing notification of the
423 hearing date at least fifteen (15) days before the hearing date,

424 provided that the governmental entity may require that any person
425 making such request renew the request for notification, not more
426 frequently than once each year, in accordance with a schedule
427 determined by the governmental entity, in order to continue
428 receiving such notices.

429 (4) If the governmental entity makes a material change in
430 the capital improvements plan or amendment, further notice and
431 hearing shall be provided before the governmental entity adopts
432 the revision and notice of the proposed change given as set forth
433 subsection (3) of this section.

434 (5) Following adoption of the initial capital improvements
435 plan, a governmental entity shall conduct a public hearing to
436 consider adoption of an ordinance authorizing the imposition of
437 development impact fees or any amendment thereof. Notice of the
438 hearing shall be provided in the same manner as set forth in
439 subsection (3) of this section for adoption of a capital
440 improvements plan.

441 (6) Nothing contained in this section shall be constructed
442 to alter the procedures for adoption of an ordinance by the
443 governmental entity, except that a development impact fee
444 ordinance shall not be adopted as an emergency measure and shall
445 not take effect earlier than thirty (30) days subsequent to
446 adoption.

447 SECTION 8. (1) All development impact fees shall be based
448 on a reasonable and equitable formula or method under which the
449 development impact fee imposed does not exceed a proportionate
450 share of the costs incurred or to be incurred by the governmental
451 entity in providing new or expanded public facilities to serve the
452 new development. The proportionate share is the cost attributable
453 to the new development after the governmental entity considers the
454 following: (a) any appropriate credit, offset or contribution of
455 money, dedication of land, or construction of system improvements;
456 (b) payments reasonably anticipated to be made by or as a result

457 of a new development in the form of user fees, debt service
458 payments, or taxes of every type, which are dedicated for system
459 improvements for which development impact fees would otherwise be
460 imposed; and (c) all other available sources of funding such
461 system improvements.

462 (2) In determining the proportionate share of the cost of
463 system improvements to be paid by the developer, the following
464 factors at a minimum shall be considered by the governmental
465 entity imposing the development impact fee.

466 (a) The cost of existing system improvements within the
467 service area or areas;

468 (b) The means by which existing system improvements
469 have been financed;

470 (c) The extent to which the new development will
471 contribute to the cost of system improvements through taxation,
472 assessment, or developer or landowner contributions, or has
473 previously contributed to the cost of system improvements through
474 developer or landowner contribution;

475 (d) The extent to which the new development is required
476 to contribute to the cost of existing system improvements in the
477 future;

478 (e) The extent to which the new development should be
479 credited for providing system improvements, without charge to
480 other properties within the service area or areas;

481 (f) The time and price differential inherent in a fair
482 comparison of fees paid at different times; and

483 (g) The availability of other sources of funding system
484 improvements including, but not limited to, user charges, general
485 tax levies, intergovernmental transfers, and special taxation.
486 The governmental entity shall develop a plan for alternative
487 sources of revenue.

488 (3) The governmental entity may not include in the
489 development and assessment of a development impact fee the

490 expenses associated with the development or amendment of a capital
491 improvements plan or any other administrative expenses associated
492 with the establishment and operation of a development impact fee
493 program.

494 (4) A developer may not be required to pay more than his
495 proportionate share of the costs of the project or to oversize his
496 facilities for use of others outside of the project without fair
497 and commensurate compensation, credit and/or reimbursement being
498 made at the time payment of the impact fee is required of the
499 developer.

500 SECTION 9. (1) Each governmental entity intending to impose
501 a development impact fee shall first prepare a capital
502 improvements plan.

503 For governmental entities required to undertake comprehensive
504 planning under Chapter 1, Title 17, Mississippi Code of 1972, such
505 capital improvements plan shall be prepared and adopted according
506 to the requirements contained in Sections 17-1-1 through 17-1-27,
507 and shall be included as an element of the comprehensive plan.
508 The capital improvements plan shall be prepared by qualified
509 professionals in fields relating to finance, engineering, planning
510 and transportation. The persons preparing the plan shall consult
511 with the development impact fee advisory committee.

512 The capital improvements plan shall contain all of the
513 following:

514 (a) A general description of all existing public
515 facilities and their existing deficiencies within the service area
516 or areas of the governmental entity and a reasonable estimate of
517 all costs and a plan to develop the funding resources related to
518 curing the existing deficiencies including, but not limited to,
519 the upgrading, updating, improving, expanding or replacing of such
520 facilities to meet existing needs and usage;

521 (b) A commitment by the governmental entity to use
522 other available sources of revenue to cure existing system
523 deficiencies where practical;
524 (c) An analysis of the total capacity, the level of
525 current usage, and commitments for usage of capacity of existing
526 capital improvements, which shall be prepared by a qualified
527 professional planner and/or by a qualified engineer licensed to
528 perform engineering services in this state;
529 (d) A description of the land use assumptions by the
530 governmental entity;
531 (e) A definitive table establishing the specific level
532 or quantity of use, consumption, generation or discharge of a
533 service unit for each category of system improvements and an
534 equivalency or conversion table establishing the ratio of a
535 service unit to various types of land uses, including residential,
536 commercial, agricultural and industrial;
537 (f) A description of all system improvements and their
538 costs necessitated by and attributable to new development in each
539 service area based on the approved land use assumptions, to
540 provide a level of service not to exceed the level of service
541 adopted in the development impact fee ordinance;
542 (g) The total number of service units necessitated by
543 and attributable to new development within each service area based
544 on the approved land use assumptions and calculated in accordance
545 with generally accepted engineering or planning criteria;
546 (h) The projected demand for system improvements
547 required by new service units projected over a reasonable period
548 of time not to exceed twenty (20) years, but no less than ten (10)
549 years;
550 (i) Identification of all sources and levels of funding
551 available to the governmental entity for the financing of the
552 system improvements;

553 (j) If the proposed system improvements include the
554 improvement of public facilities under the jurisdiction of the
555 State of Mississippi or another governmental entity, then an
556 agreement between governmental entities shall specify the
557 reasonable share of funding by each unit, provided the
558 governmental entity authorized to impose development impact fees
559 shall not assume more than its reasonable share of funding joint
560 improvements, nor shall the agreement permit expenditure of
561 development impact fees by a governmental entity which is not
562 authorized to impose development impact fees unless such
563 expenditure is pursuant to a developer agreement under Section 15
564 of this act; and
565 (k) A schedule setting forth dates for commencing and
566 completing construction of all improvements identified in the
567 capital improvements plan.
568 (2) The governmental entity imposing a development impact
569 fee shall update the capital improvements plan at least once every
570 five (5) years. The five-year period shall commence from the date
571 of the original adoption of the capital improvements plan. The
572 updating of the capital improvements plan shall be made in
573 accordance with procedures set forth in this section.
574 (3) The governmental entity must annually adopt a capital
575 improvements plan budget.
576 (4) A statement that development impact fees shall not be
577 used to cure deficiencies in existing public facilities within the
578 service area or areas of the governmental entity.
579 SECTION 10. (1) In the calculation of development impact
580 fees for a particular project, credit or reimbursement shall be
581 given for the present value of any construction of system
582 improvements or contribution or dedication of land or money
583 required by a governmental entity from a developer for system
584 improvements of the category for which the development impact fee

585 is being collected. Credit or reimbursement shall not be given
586 for project improvements.
587 (2) If a developer is required to construct, fund or
588 contribute system improvements in excess of the development
589 project's proportionate share of system improvements costs, the
590 developer shall receive a credit on future impact fees or be
591 reimbursed at the developer's choice for such excess construction,
592 funding or contribution from development impact fees paid by
593 future development which impacts the system improvements
594 constructed, funded or contributed by the developer(s) or fee
595 payer.
596 (3) If credit or reimbursement is due to the developer under
597 this section, the governmental entity shall enter into a written
598 agreement with the fee payer, negotiated in good faith, prior to
599 the construction, funding or contribution. The agreement shall
600 provide for the amount of credit or the amount, time and form of
601 reimbursement.
602 SECTION 11. (1) An ordinance imposing development impact
603 fees shall provide that all development impact fee funds shall be
604 maintained in interest-bearing accounts, within the capital
605 projects fund, for each category of system improvements.
606 Accounting records shall be maintained for each category of system
607 improvements and the service area in which the fees are collected.
608 Interest earned on development impact fees shall be considered
609 funds of the account on which it is earned, and shall be subject
610 to all restrictions placed on the use of development impact fees
611 under the provisions of this chapter.
612 (2) Expenditures of development impact fees shall be made
613 only for the category of system improvements and within or for the
614 benefit of the service area for which the development impact fee
615 was imposed as shown by the capital improvements plan and as
616 authorized in this chapter. Development impact fees shall not be

617 used for any purpose other than system improvement costs to create
618 additional improvements to serve new growth.
619 (3) As part of its annual audit process, a governmental
620 entity shall prepare an annual report describing the amount of all
621 development impact fees collected, appropriated, and spent during
622 the preceding year by category of public facility and service
623 area.
624 (4) Collected development impact fees must be expended
625 within five (5) years from the date they were collected, on a
626 first-in, first-out (FIFO) basis. Any funds not expended within
627 the prescribed time(s) shall be refunded pursuant to Section 12 of
628 this act.
629 SECTION 12. (1) Any governmental entity which adopts a
630 development impact fee ordinance shall provide for refunds upon
631 the request of an owner of property on which a development impact
632 fee has been paid if:
633 (a) Service is available but not provided in accordance
634 with Section 11 of this act;
635 (b) A building permit or permit for installation of a
636 manufactured home is denied or abandoned; or
637 (c) The governmental entity, after collecting the fee
638 when service is not available, has failed to appropriate and
639 expend the collected development impact fees under Section 11 of
640 this act.
641 (2) When the right to a refund exists, the governmental
642 entity shall send a refund to the fee payer within ninety (90)
643 days after it is determined by the governmental entity that a
644 refund is due.
645 (3) A refund shall include a refund of interest at the rate
646 of interest earned on the impact fees to be refunded.
647 (4) Any person entitled to a refund shall have standing to
648 bring suit in chancery court for a refund under the provisions of
649 this chapter if there has not been a timely payment of a refund

650 under subsection (2) of this section, and if successful shall be
651 entitled to recover attorney fees and costs expended in bringing
652 suit.

653 SECTION 13. (1) A governmental entity which adopts a
654 development impact fee ordinance shall provide for administrative
655 appeals by the developer or fee payer from any discretionary
656 action or inaction by or on behalf of the governmental entity.

657 (2) A fee payer may pay a development impact fee under
658 protest in order to obtain a development approval or building
659 permit. A fee payer making such payment shall not be estopped
660 from exercising the right of appeal provided in this chapter, nor
661 shall such fee payer be estopped from receiving a refund of any
662 amount deemed to have been illegally collected.

663 (3) A governmental entity which adopts a development impact
664 fee ordinance shall provide for mediation by a qualified
665 independent party, upon voluntary agreement by the fee payer and
666 the governmental entity, to address a disagreement related to the
667 impact fee for proposed development. The ordinance shall provide
668 the mediation may take place at any time during the appeals
669 process and participation in mediation does not preclude the fee
670 payer from pursing other remedies provided for in this act or
671 otherwise at law. The ordinance shall provide that mediation
672 costs will be shared equally by the fee payer and the governmental
673 entity.

674 (4) Any person or entity in or owning property within a
675 service area, and any organization, association, corporation
676 representing the interest of person(s) or entities owning property
677 within a service area, may file a declaratory judgment action, in
678 chancery court in the county in which the municipality is located,
679 to challenge the validity of the impact fee, the amount or any
680 aspect of the administration of an impact fee ordinance provided
681 for in this chapter.

682 (5) A chancellor may award reasonable attorney fees and
683 costs to the prevailing party in any action brought under this
684 section.

685 SECTION 14. A governmental entity may provide in a
686 development impact fee ordinance the means for collection of
687 development impact fees, including, but not limited to:

688 (a) Additions to the fee for reasonable interest for
689 nonpayment or late payment;

690 (b) Withholding of the building permit or other
691 governmental approval until the development impact fee is paid;

692 (c) Withholding of utility services until the
693 development impact fee is paid; and

694 (d) Imposing liens on the real property affected for
695 failure to timely pay a development impact fee.

696 SECTION 15. (1) Nothing in this chapter shall prevent a
697 town or city from requiring a developer to construct reasonable
698 project improvements in conjunction with a development project,
699 otherwise lawfully authorized by municipal ordinance and state
700 law.

701 (2) Nothing in this chapter shall be construed to prevent or
702 prohibit private agreements between property owners or developers,
703 the Mississippi Department of Transportation or governmental
704 entities in regard to the construction or installation of system
705 improvements or providing for credits or reimbursements for system
706 improvement costs incurred by a developer, including interproject
707 transfers of credits, or providing for reimbursement for project
708 improvements which are used or shared by more than one (1)
709 development project.

710 (3) If it can be shown that a proposed development will have
711 a direct impact on a public facility under the jurisdiction of a
712 public body or political subdivision of the State of Mississippi,
713 then any such agreement as provided for in subsection (2) of this
714 section, shall include a provision for the allocation of impact

715 fees collected from the developer for the improvement of the
716 public facility by the political subdivision affected.
717 (4) Nothing in this chapter shall be construed to create any
718 additional right to develop real property or diminish the power of
719 towns or cities to regulate the orderly development of real
720 property within their boundaries.
721 (5) Nothing in this chapter shall work to limit the use by
722 governmental entities of the power of eminent domain or supersede
723 or conflict with requirements or procedures authorized in state
724 law for local improvement districts or general obligation bond
725 issues.
726 SECTION 16. (1) The provisions of this chapter shall not be
727 construed to repeal any existing laws authorizing a governmental
728 entity to impose fees or require contributions or property
729 dedications for capital improvements.
730 (2) All existing ordinances imposing development impact fees
731 shall be brought into conformance with the provisions of this
732 chapter within one (1) year after the effective date of this
733 chapter. Impact fees collected and developer agreements entered
734 into before the expiration of the one-year period shall not be
735 invalid by reason of this chapter.
736 (3) After adoption of a development impact fee ordinance, in
737 accordance with the provisions of this chapter, notwithstanding
738 any other provision of law, development requirements for system
739 improvements shall be imposed by governmental entities only by way
740 of development impact fees imposed pursuant to and in accordance
741 with the provisions of this chapter.
742 (4) Notwithstanding any other provisions of this chapter,
743 that portion of a project for which a valid building permit has
744 been issued or construction has commenced, prior to the effective
745 date of a development impact fee ordinance, shall not be subject
746 to additional development impact fees so long as the building

747 permit remains valid or construction is commenced and is pursued
748 according to the terms of the permit or development approval.
749 SECTION 17. The provisions of this act shall be codified as
750 a separate chapter in Title 27, Mississippi Code of 1972.
751 SECTION 18. This act shall take effect and be in force from
752 and after July 1, 2001.